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5 **NOT FOR PUBLICATION**

6 IN THE UNITED STATES DISTRICT COURT

7 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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9 GREGORY BENDER,

10 Plaintiff,

No. C 09-01151 JSW

11 v.

12 NATIONAL SEMICONDUCTOR  
13 CORPORATION,

14 Defendant.

15  
16 **ORDER GRANTING MOTION TO  
DISMISS OR FOR A MORE  
DEFINITE STATEMENT AND  
GRANTING PLAINTIFF LEAVE  
TO AMEND**

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**INTRODUCTION**

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Now before the Court for consideration is the Motion to Dismiss or for a More Definite Statement filed by Defendant National Semiconductor Corporation (“National Semiconductor”). Having considered the parties’ papers, relevant legal authority, and the record in this case, the Court finds the matter suitable for disposition without oral argument, vacates the hearing set for December 11, 2009, GRANTS the motion to dismiss, and GRANTS Plaintiff leave to amend. *See* N.D. Civ. L-R 7-1(b).

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**BACKGROUND**

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On March 16, 2009, Plaintiff Gregory Bender (“Bender”) filed the original complaint in this action, in which he alleges that National Semiconductor infringed United States Patent No. 5,103,188, entitled “Buffered Transconductance Amplifier,” (“the ‘188 Patent”).<sup>1</sup> On May 14,

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<sup>1</sup> The instant case is one of 24 cases Plaintiff has filed in this District alleging infringement of the ‘188 Patent.

1 2009, Bender filed an Amended Complaint, in which he added further details regarding the  
2 alleged acts of infringement. (*Compare* Compl. ¶ 8 with Am. Compl. ¶ 8.)

3 Specifically, Bender alleges, on information and belief, that:

4 National Semiconductor has performed acts and performs acts that infringe,  
5 and induce others to infringe, one or more of the claims of the '188 Patent  
6 (including, without limitation, claims 8-14 and 29-46) by making, using,  
7 offering for sale, and/or selling products that consist of, comprise, and/or  
8 contain at least one circuit, silicon or otherwise, which contains and/or utilizes  
9 at least one buffered transconductance amplifier (commonly known in the  
10 analog electronics industries as a "current feedback amplifier," a "high-gain  
11 current feedback amplifier," or a "voltage feedback amplifier" as the case may  
12 be) and/or by practicing related methods embodying inventions claimed  
13 therein, which such products include, without limitation, cell phones,  
14 computer equipment, network drivers, high definition television sets,  
15 ultrasound machines, MRI machines, lab equipment, arbitrary waveform  
16 generators, audio amplifiers, video amplifiers, hard disc drives, ADC/DAC  
17 converters, DVD-RW players, DSL modems, CCD cameras, satellite  
18 communication technology, and other products where high performance, high  
19 speed analog circuits are used, and/or components thereof.

20 (Am. Compl. ¶ 8.)

21 The Court shall address additional facts as necessary in the remainder of this Order.

## ANALYSIS

22 **A. Applicable Legal Standards.**

23 A motion to dismiss is proper under Federal Rule of Civil Procedure 12(b)(6) where the  
24 pleadings fail to state a claim upon which relief can be granted. The complaint is construed in  
25 the light most favorable to the non-moving party and all material allegations in the complaint  
26 are taken to be true. *Sanders v. Kennedy*, 794 F.2d 478, 481 (9th Cir. 1986). However, even  
27 under the liberal pleading standard of Federal Rule of Civil Procedure 8(a)(2), "a plaintiff's  
28 obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and  
conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell*  
*Atlantic Corporation v. Twombly*, 550 U.S. 544, 555 (2007) (citing *Papasan v. Allain*, 478 U.S.  
265, 286 (1986)).

29 Pursuant to *Twombly*, a plaintiff must not merely allege conduct that is conceivable but  
30 must instead allege "enough facts to state a claim to relief that is plausible on its face." *Id.* at  
31 570. "A claim has facial plausibility when the plaintiff pleads factual content that allows the

1 court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”  
2 *Ashcroft v. Iqbal*, 556 U.S. \_\_, 129 S. Ct. 1937, 1949 (2009) (citing *Twombly*, 550 U.S. at 556).  
3 “The plausibility standard is not akin to a probability requirement, but it asks for more than a  
4 sheer possibility that a defendant has acted unlawfully. ... When a complaint pleads facts that  
5 are merely consistent with a defendant’s liability, it stops short of the line between possibility  
6 and plausibility of entitlement to relief.” *Id.* (quoting *Twombly*, 550 U.S. at 556-57) (internal  
7 quotation marks omitted). If the allegations are insufficient to state a claim, a court should  
8 grant leave to amend, unless amendment would be futile. *See, e.g., Reddy v. Litton Indus., Inc.*,  
9 912 F.2d 291, 296 (9th Cir. 1990); *Cook, Perkiss & Liehe, Inc. v. N. Cal. Collection Serv., Inc.*,  
10 911 F.2d 242, 246-47 (9th Cir. 1990).

11 Rule 12(e) provides that “[i]f a pleading ... is so vague or ambiguous that a party cannot  
12 reasonably be required to frame a responsive pleading, the party may move for a more definite  
13 statement before interposing a responsive pleading.” Fed. R. Civ. P. 12(e). Motions for more a  
14 definite statement are disfavored and are “proper only where the complaint is so indefinite that  
15 the defendant cannot ascertain the nature of the claim being asserted.” *Sagan v. Apple  
16 Computer, Inc.*, 874 F. Supp. 1072, 1077 (C.D. Cal. 1994). Moreover, such motions may not be  
17 used as a substitute for discovery. *Id.*

18 **B. National Semiconductor’s Motion is Granted, with Leave to Amend.**

19 National Semiconductor moves to dismiss the Amended Complaint on the grounds that  
20 Bender fails to allege facts sufficient to identify a specific National Semiconductor product that  
21 allegedly infringes the ‘188 Patent and fails to allege facts to support his claim for inducing  
22 infringement. National Semiconductor also argues that Bender fails to allege infringing activity  
23 within the United States. Bender concedes that he failed to allege infringing activity within the  
24 United States, but he contends that the allegations in paragraph 8, set forth above, are sufficient  
25 to state a claim. Bender also included a proposed Second Amended Complaint with his  
26 opposition, which includes allegations of infringement within the United States, and adds  
27 further details to the allegations of infringement.

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1        Specifically, in the proposed Second Amended Complaint, Bender alleges that National  
2 Semiconductor infringes the ‘188 Patent by making, using or selling products within the United  
3 States that “... contain at least one circuit, silicon or otherwise, which contains and/or utilizes at  
4 least one buffered transconductance amplifier....” (Proposed Second Amended Complaint at  
5 3:11-13.) After reciting the same general categories of products in which such circuits can be  
6 found as he did in the Amended Complaint, Bender then identifies the National Semiconductor  
7 products that are alleged to infringe, which include, without limitation, “amplifiers (i.e., op  
8 amps, comparators, differential amps, RF power detectors, variable gain amps, and video  
9 amplifier solutions) utilizing buffered transconductance architectures and such National  
10 Semiconductor audio data convertor, and interface products which utilize any of such amplifiers  
11 or amplifiers with similar architectures, a representative sample list of which products is as  
12 follows - LM6152, LM6171, LM7171, LM7272, LMH6553, LMH6609, LMH6643, and  
13 LMV225.” (*Id.* at 4:1-9.)<sup>2</sup>

14        Although the Court concludes that the allegations in Plaintiff’s first amended complaint  
15 are not sufficient to state a claim, it concludes that the proposed amendments are. The Court  
16 also finds these allegations are sufficiently specific to permit National Semiconductor to  
17 respond to that complaint. *See, e.g., McZeal v. Sprint Nextel Corp.*, 501 F.3d 1354, 1357-58  
18 (Fed. Cir. 2007); *Advanced Analogic Technologies, Inc. v. Kinetic Technologies, Inc.*, 2009  
19 U.S. Dist. LEXIS 57953 at \*2-\*3 (N.D. Cal. July 8, 2009); *cf. Bender v. Broadcom Corp.* 09-  
20 CV-1147-MHP, Docket No. 31 (Memorandum and Order re Defendant’s Motion to Dismiss  
21 at6:1-25).

22        In his proposed Second Amended Complaint, Bender also alleges that National  
23 Semiconductor has induced infringement of the ‘188 Patent “by providing its customers and  
24 others with detailed explanations, instructions, and information as to arrangements,

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26       <sup>2</sup> National Semiconductor claims that these amendments still fail to state a  
27 claim because they do not identify a National Semiconductor *circuit* that is alleged to  
28 directly infringe the claims. National Semiconductor also argues that Bender does not  
identify where the identified amplifiers have been used in circuits in a fashion to either  
induce or contribute to infringement of the claims of the ‘188 Patent. The Court cannot  
make these determinations from a review of the allegations in the Second Amended  
Complaint and the ‘188 Patent.

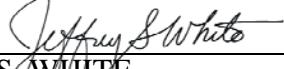
1 applications, and uses of its products that promote and demonstrate how to use its products in an  
2 infringing manner.” (Proposed Second Amended Complaint at 3:2-7.) The Court concludes  
3 that although the first amended complaint is insufficient, the proposed amendments state a  
4 claim for inducement by alleging that National Semiconductor’s customers directly infringe the  
5 ‘188 Patent by using National Semiconductor’s products in an infringing manner. *See, e.g.*,  
6 *Rambus v. Nvidia Corp.*, 2008 WL 4911165 at \*3 (N.D. Cal. Nov. 13, 2008).

7 **CONCLUSION**

8 For the foregoing reasons, National Semiconductor’s motion to dismiss the first  
9 amended complaint is GRANTED. However, because the Court finds that the proposed Second  
10 Amended Complaint sufficiently states a claim, Bender is granted leave to amend. Bender shall  
11 file and serve the Second Amended Complaint within five (5) days of the date of this Order, and  
12 Defendant shall file its answer within fourteen (14) days thereafter.

13 **IT IS SO ORDERED.**

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15 Dated: December 7, 2009

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17 JEFFREY S. WHITE  
18 UNITED STATES DISTRICT JUDGE

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